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June 22, 2001

Paul G. Smith, Esq.
General Counsel
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Library Courts Building
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Sacramento, CA 94237-0001

RE: Eligible Costs Under the Library Bond Act of 2000

Dear Mr. Smith:

This letter provides an informal opinion regarding whether or not grant funds authorized by Education Code section 19988 and the matching funds required by Education Code section 19995 may be used to make lease payments for the land upon which new library facilities are acquired or constructed or upon which additions are made to existing public library facilities under the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000 (Library Bond Act or Bond Act).

ISSUES PRESENTED

Can grant funds or local matching funds be used to pay for the lease of land under the Library Bond Act?

SHORT ANSWER

No, neither bond proceeds nor local matching funds may be used to make lease payments pursuant to the Bond Act.

BACKGROUND

The Library Bond Act provides for the issuance of State of California General Obligation Bonds in the amount of \$350 million dollars.¹ The money raised from the Bond Act is intended to

¹ Ed. Code § 20000.

Mr. Smith
Page 2
June 22, 2001

provide grants to cities, counties, a city and county, or districts that are authorized at the time of the project application to own and maintain a public library facility.²

The Bond Act provides that 65% of eligible costs for a selected library project, up to a maximum of twenty million dollars (\$20,000,000) per project, will be provided to the grant recipient with the remaining 35% being provided by the grant recipient from any available source.³ The Bond Act expressly provides that the grant money and the matching funds shall be used by the recipient for the acquisition of land necessary for the purpose of acquiring or constructing new facilities or additions to existing public library facilities.⁴ The Bond Act also prohibits the use of grant funds or matching funds from being used by the recipient for the operating expenses⁵ of the library.⁶

Acquisition vs. Lease Payments

As stated above, grant funds and matching funds may be used for the "acquisition of land necessary" for the acquisition or construction of, or addition to public library facilities.⁷ Therefore, for such funds to be spent consistent with the requirements of the Bond Act, the money must be used for the "acquisition" of such land. To determine the intent of legislation as to what is meant by "acquisition," the words themselves are first consulted, giving them their usual and ordinary meaning.⁸ Black's Law Dictionary defines "acquisition" as "the act of becoming the owner of certain property. . ."⁹

Entering into a lease is not defined as "acquiring" land but is simply "any agreement which gives rise to relation between a landlord and tenant."¹⁰ Normally leases permit the lessor to use and enjoy the land for "valuable consideration and for [a] definite term and at the end of [that] term [the] owner has absolute right to retake, control and use the property."¹¹ Therefore, making a lease payment is typically not an act which leads to the lessor becoming owner of certain

² Ed. Code §19988.

³ Ed. Code § 19995.

⁴ Ed. Code § 19989.

⁵ Black's Law Dictionary defines operating expense as "Those expenses required to keep the business running, e.g. *rent*, electricity, heat. (Emphasis added). Black's Law Dictionary 1091 (6th ed. 1990).

⁶ Ed. Code §19900(c).

⁷ Ed. Code § 19989.

⁸ *Dafonte v. Up-Right Inc.* 2 Cal. 4th 593 (1992).

⁹ Black's Law Dictionary 24 (6th ed. 1990).

¹⁰ Black's Law Dictionary 889 (6th ed. 1990).

¹¹ *Id.* citing *Transamerica Leasing Corp. v. Bur. of Revenue* (1969) 450 P.2d 934, 937. See also Com. Code § 10103.

Mr. Smith
Page 3
June 22, 2001

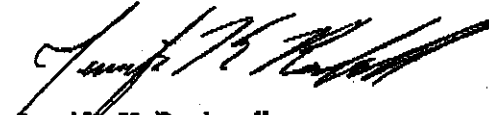
property but is rather the consideration which permits the lessor to use the property for a given period of time.

ANALYSIS / CONCLUSION

Based on the usual and ordinary definition of "acquisition," it is clear that making a normal lease payment does not fit within the meaning of an "acquisition of land." Yet the Bond Act is clear that grant funds and matching funds may only be used for an acquisition of land. Therefore, ordinary lease payments are not eligible costs for grant funds or for matching funds. In addition, depending on how a lease is structured, payments under the lease might be characterized as an operating expense, which is also not an eligible cost for grant funds or for matching funds.

If you have any questions or concerns, please call me at (916) 445-6998.

Sincerely,



Jennifer K. Rockwell
Deputy Attorney General

For BILL LOCKYER
Attorney General